



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MAY - 4 2011

Brett G. Kappel, Esq.  
Arent Fox LLP  
1050 Connecticut Avenue, NW  
Suite 400  
Washington, DC 20036-5339

RE: MUR 6270  
Owensboro Dermatology Associates, P.S.C.

Dear Mr. Kappel:

On April 15, 2010, the Federal Election Commission notified your client, Owensboro Dermatology Associates, P.S.C., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time. On April 26, 2011, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe Owensboro Dermatology Associates, P.S.C., violated 2 U.S.C. § 441d or 11 C.F.R. § 110.11. Further, the Commission voted to dismiss the allegation that Owensboro Dermatology Associates, P.S.C. violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact April J. Sands, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Mark Allen  
Assistant General Counsel

Enclosure

Factual and Legal Analysis for Owensboro Dermatology Associates, P.S.C.

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6270**

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6 **RESPONDENT:** Owensboro Dermatology Associates, P.S.C.  
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9 **I. GENERATION OF MATTER**

10 This matter was generated by a complaint filed with the Federal Election Commission by  
11 Johnathan C. Gay. *See* 2 U.S.C. § 437g(a)(1).

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 The complaint alleges that the Rand Paul Committee and Owensboro Dermatology  
14 Associates, P.S.C. ("ODA"), a corporation, violated 2 U.S.C. § 441b because the Rand Paul  
15 Committee failed to reimburse ODA for expenses for an open house at ODA's offices at which  
16 Rand Paul was a featured guest. Section 441b prohibits corporations from making contributions  
17 in connection with federal elections, and prohibits candidates and their authorized committees  
18 from accepting such contributions. According to the ODA response, Owensboro Dermatology  
19 Associates is a professional services corporation with two shareholders.<sup>1</sup>

20 The complaint contains ODA's invitation to the event, which states "Come mingle with  
21 fellow medical community members and meet the Republican Candidate for U.S. Senate Rand  
22 Paul, M.D." *See* Complaint Exhibit J. ODA states in its response that it held an open house in  
23 its offices "for members of the Owensboro medical community" in order to give ODA staff and  
24 "the local medical community" the opportunity to meet Rand Paul. ODA Response at 2-3.  
25 However, the Rand Paul Committee website described the event as follows: "This Tuesday,

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<sup>1</sup> A search of the business records of the Kentucky Secretary of State confirms that Owensboro Dermatology Associates, P.S.C. is registered as a for-profit professional services corporation.

1 Dr. Paul will attend a Meet and Greet at Owensboro Dermatology Associates located on  
2 2821 New Hartford Road in Owensboro. The event is open to the public and begins at 6:00 PM  
3 and ends at 7:30 PM.” See <http://www.randpaul2010.com/2009/08/rand-focusing-in-on-daviess->  
4 [county/](http://www.randpaul2010.com/2009/08/rand-focusing-in-on-daviess-) (last checked January 19, 2011).

5 The Commission has no information regarding the number of attendees, the costs  
6 incurred by ODA to host the event, or the cost of the invitation, though it is likely, given that the  
7 event was held at ODA’s own offices, that the costs were relatively low. Therefore,  
8 the Commission does not believe it would be an efficient use of its limited resources to  
9 investigate the circumstances of this event further. Accordingly, the Commission is exercising  
10 its prosecutorial discretion and dismissing the allegation that Owensboro Dermatology  
11 Associates, P.S.C. violated 2 U.S.C. § 441b(a). See *Heckler v. Chaney*, 470 U.S. 821 (1985).

12 The complaint also alleges that ODA’s invitation to the event required a disclaimer.  
13 See 2 U.S.C. § 441d and 11 C.F.R. § 110.11.<sup>2</sup> As the invitation did not solicit contributions,  
14 expressly advocate the election of a clearly identified candidate, see 11 C.F.R. § 100.22, or  
15 constitute an “electioneering communication,”<sup>3</sup> it did not require a disclaimer. Accordingly, the  
16 Commission finds no reason to believe that Owensboro Dermatology Associates, P.S.C. violated  
17 2 U.S.C. § 441d or 11 C.F.R. § 110.11.

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<sup>2</sup> The following types of communications require a “disclaimer” statement identifying the person paying for the communication: 1) Any public communication made by a political committee; 2) Electronic mail of more than 500 substantially similar communications when sent by a political committee; 3) A political committee web site available to the general public; or 4) Any public communication made by any person that contains express advocacy, solicits a contribution or qualifies as an “electioneering communication” under 11 C.F.R. § 100.29.

<sup>3</sup> An “electioneering communication” is defined as a broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election. 2 U.S.C. § 434(f)(3); 11 C.F.R. § 100.29.